

Message Text

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67

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DRAFTED BY L/ARA:GCHESTER:ZC

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TO AMEMBASSY PANAMA PRIORITY

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E.O. 11652: N/A

TAGS: BDIS, PN

SUBJECT: FERTILIZER SALE PROBLEM

REF: PANAMA 6131

1. IN CERTAIN CIRCUMSTANCES BINDING CONTRACTS CAN RESULT FROM TELEPHONIC AND TELEGRAPHIC COMMUNICATIONS UNDER U.S. LAW. THIS VERY WELL MAY BE THE ESTABLISHED PRACTICE IN SUCH COMMODITY CASES. ALTHOUGH A U.S. COURT COULD FIND A BINDING CONTRACT HERE, SUCH A DECISION WOULD HAVE TO BE PRECEDED BY CAREFUL SCRUTINY OF ALL TESTIMONY AND DOCUMENTARY EVIDENCE.

2. HOWEVER, PRIOR LEGAL QUESTION WOULD BE WHICH COUNTRY'S CONTRACT LAW TO APPLY TO THE RELATIONSHIP. ON THE APPARENT FACTS, A COURT COULD FIND THAT PANAMANIAN CONTRACT LAW SHOULD APPLY. IN THAT SITUATION AND IF YOUR INFORMATION IN PARAGRAPH 3 OF REFTEL IS CORRECT, ICEC'S SUIT WOULD BE DISMISSED DESPITE ANY VALIDITY IT MIGHT HAVE HAD

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IF U.S. CONTRACT LAW HAD BEEN APPLICABLE.

3. THEREFORE, IT WOULD BE FRUITLESS TO SPECULATE TO EITHER
PARTY AS TO POSSIBLE VALIDITY OF ICEC'S CLAIM, OTHER THAN
TO INDICATE BINDING COMMITMENT MAY HAVE RESULTED UNDER U.S.
LAW. NATURALLY, ICEC SHOULD CONSULT COUNSEL ON CHANCES OF

SUCCESS IN PURSUING LEGAL REMEDY. KISSINGER

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